

United States Senate

WASHINGTON, DC 20510-4305

January 18, 2013

The Honorable Eric Holder
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Holder:

Like many Americans, I was saddened to learn last week of the death of Aaron Swartz. Mr. Swartz was, among other things, a brilliant technologist and a committed activist for the causes in which he believed – including, notably, the freedom of information. His death, at the young age of twenty-six, was tragic.

As you are doubtless aware, Mr. Swartz was facing an aggressive prosecution by the Department of Justice when he took his own life. The U.S. Attorney's Office for the District of Massachusetts accused him of breaking into the computer networks of the Massachusetts Institute of Technology and downloading without authorization thousands of academic articles from a subscription service. While the subscription service did not support a prosecution, in July 2011 the U.S. Attorney's office indicted him on four counts of fraud and computer crimes, charges that reportedly could have resulted in up to 35 years imprisonment and a \$1 million dollar fine. This past September, the U.S. Attorney's office filed a superseding indictment charging Mr. Swartz with thirteen felony counts and the prospect of even longer imprisonment and greater fines.

Mr. Swartz's case raises important questions about prosecutorial conduct:

First, on what basis did the U.S. Attorney for the District of Massachusetts conclude that her office's conduct was "appropriate?" Did that office, or any office within the Department, conduct a review? If so, please identify that review and supply its contents.

Second, was the prosecution of Mr. Swartz in any way retaliation for his exercise of his rights as a citizen under the Freedom of Information Act? If so, I recommend that you refer the matter immediately to the Inspector General.

Third, what role, if any, did the Department's prior investigations of Mr. Swartz play in the decision of with which crimes to charge him? Please explain the basis for your answer.

Fourth, why did the U.S. Attorney's office file the superseding indictment?

Fifth, when the U.S. Attorney's office drafted the indictment and the superseding indictment, what consideration was given to whether the counts charged and the associated penalties were proportional to Mr. Swartz's alleged conduct and its impact upon victims?

Sixth, was it the intention of the U.S. Attorney and/or her subordinates to "make an example" of Mr. Swartz? Please explain.

Finally, the U.S. Attorney has blamed the "severe punishments authorized by Congress" for the apparent harshness of the charges Mr. Swartz faced. Does the Department of Justice give U.S. Attorneys discretion to charge defendants (or not charge them) with crimes consistent with their view of the gravity of the wrongdoing in a specific case?

I appreciate your prompt and thorough answers to these questions.

Sincerely,

A handwritten signature in dark ink, reading "John Cornyn". The signature is written in a cursive, flowing style. The first letter "J" is large and loops around the first part of the name. The last name "Cornyn" is written in a similar cursive style.

JOHN CORNYN
United States Senator